



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 12, 1992

Mr. Michael Anthony Moss  
Assistant City Attorney  
City of Houston  
Legal Department  
P. O. Box 1562  
Houston, Texas 77251-1562

OR92-468

Dear Mr. Moss:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 16654.

The City of Houston (the "city") received on February 26, 1992 a request for certain information relating to Southwestern Bell Telephone Company ("SWBT"). Specifically, the requestor seeks

1. A copy of the current municipal franchise Ordinance which grants Southwestern Bell Telephone Company ("SWBT") the right to use your public property,
2. The municipal franchise audit including workpapers or any formal or informal report including workpapers involving SWBT which either directly or indirectly influenced the Ordinance in the above,
3. A copy of all previous franchise Ordinances involving SWBT which originated after 1990.

You advise us that the requestor has been provided with information responsive to the first and third items of the request. With respect to the second item, you have submitted to us for review an internal audit of SWBT's franchise with the city including related correspondence and memorandums (Exhibit C). You claim that

this information is excepted from required public disclosure by sections 3(a)(1), 3(a)(4), and 3(a)(10) of the Open Records Act.

Pursuant to section 7(c) of the act, we have notified the third party whose proprietary interests may be compromised by disclosure of the requested information. In response, we have received a letter from SWBT. SWBT contends that release of the requested information would reveal information that constitutes confidential commercial or financial information. SWBT also claims that the requested information is excepted from required public disclosure by section 3(a)(4) of the Open Records Act.

Section 3(a)(4) excepts from required public disclosure "information which, if released, would give advantage to competitors or bidders." The purpose of section 3(a)(4) is to protect governmental interests in commercial transactions. Open Records Decision No. 541 (1990) (copy enclosed). Neither you nor SWBT indicate how the requested information relates to a competitive bidding situation or to a commercial transaction to which the city is party. Accordingly, you may not properly invoke the section 3(a)(4) exception.

SWBT also claims that the requested information is excepted from required public disclosure under the "commercial or financial information" branch of section 3(a)(10). SWBT asserts that the requested information is excepted because its release would cause substantial harm to its competitive position. Past open records decisions issued by this office have relied on federal cases ruling on exemption 4 of the federal Freedom of Information Act (FOIA) in applying section 3(a)(10) to commercial information. See *National Parks & Conservation Ass'n v. Morton*, 498 F2d 765, 770 (D.C. Cir. 1974). However, in Open Records Decision No. 592 (1991) (copy enclosed), this office's reliance on federal interpretations of exemption 4 of FOIA was reexamined. As a consequence of this reexamination, open records decisions exempting commercial and financial information pursuant to federal interpretations of exemption 4 were overruled. Unless the information requested constitutes trade secrets or is "privileged or confidential" under the common or statutory law of Texas, it cannot be withheld under section 3(a)(10). Neither the city nor SWBT have demonstrated that the requested information constitutes trade secrets or is "privileged or confidential" under the common or statutory law of Texas. Accordingly, the requested information may not be withheld from required public disclosure under section 3(a)(10) of the Open Records Act and must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-468.

Yours very truly,



Celeste A. Baker  
Assistant Attorney General  
Opinion Committee

CAB/GCK/lmm

Enclosures: Open Records Decision Nos. 592, 541

Ref.: ID# 16654  
ID# 16735  
ID# 16833  
ID# 16864

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